

BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS

CHIEF BLACKBIRD CENTER

P.O. Box 39 Odanah, Wisconsin 54861

November 11, 2019

Honorable Tony Evers
Governor of the State of Wisconsin
115 East
State Capitol
Madison, WI 53702

HAND DELIVERED

**Re: The Bad River Band of Lake Superior Chippewa Request for a Veto of SB
386/AB426**

Dear Governor Evers:

Since 1848, when the State of Wisconsin came into being, with powers to enact and enforce laws, the Bad River Band and the State of Wisconsin have enjoyed a co-existence as sovereigns with powers over their lands and peoples. In the past few decades, the State has come to recognize its obligations to acknowledge the sovereignty the Bad River Band and the other ten federally recognized Indian Tribes with reservations within Wisconsin. Part of this recognition has involved the implementation of government-to-government consultations on State law and policy that may directly impact the Tribes' ability to self-govern, and furthermore, a recognition on the part of the State that it may not, through law or policy, impede the exercise of rights of the Tribes with respect to title to their lands and reserved treaty rights. The Bad River Band celebrated your election as governor because of your understanding of, and commitment to, the Tribal-State relations.

Normally, the Tribes do not weigh in on state legislation. The Bad River Band respects the State's day-to-day governance and seeks out opportunities to cooperate with the State on issues of joint concern. With respect to the legislation, numbered SB 386/AB 426, however, the Bad River Band is requesting a veto due to the very unusual nature of this legislation. Enactment of this law may have a significant impact on the Bad River Band, impeding the ability of our nation to use our land and exercise our reserved treaty rights.

The legislation numbered SB 386/AB 426 ("Felony Trespass Bill") contains two parts that the Bad River Band opposes. The first part of the bill creates new language in Wisconsin Statute section 943.01 (criminal damage to an energy provider property) and the second part amends part of Wisconsin Statute section 943.143 (trespassing on the property of an energy provider), extending the scope of these felony violations to properties owned, leased and operated by oil and water companies. As these provisions are within the Wisconsin criminal code, they would be enforced within tribal lands subject to the operation of Public Law 280 (official citation), including the Bad River Reservation.

The Bad River Band is opposed to the enactment of the Felony Trespass Bill due to its direct effects as applied to reservation lands and for more general reasons. Specifically, the Felony Trespass Bill constitutes an illegal taking of Bad River lands. By expanding the definition of “energy provider property” to include properties in which oil companies operate, the Felony Trespass Bill would apply to the existing oil pipeline corridor on the Bad River Reservation.

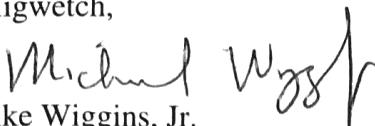
Reservation lands around the oil pipeline corridor are regularly used by tribal members for hunting, wild plant gathering and recreation, necessarily accessing and using the corridor. Currently, the company operating the oil pipeline on the Bad River Reservation has no power to exclude anyone from these lands. With the enactment of the Felony Trespass Bill, Bad River members, employees and guests may be subject to felony-level conviction for the use of these tribal lands if they are unable to prove that they are lawfully authorized on the land and the company consents to their presence.

To create such a burden on the use of tribal land is unconscionable. Furthermore, to give a private entity the power to exclude entry onto tribal lands, through legislative fiat, is a violation of the human and political rights of the Bad River Band and its members. On a practical level, the enactment of this bill could stifle the lawful exercise of on-reservation treaty rights within the Bad River Reservation; it could also lead to significant social and political conflict, adversely impacting local community relations and effective law enforcement.

The Bad River Band is also opposed to the Felony Trespass Bill on a more general level. The Felony Trespass Bill and the current statutes regarding energy provider property (Wis. Stat. §§ 943.01 & 943.143) contain vague language and could be applied in an overbroad manner to criminalize the benign conduct of tribal and non-tribal citizens. Every day, Wisconsinites cross power lines, natural gas and oil pipelines and water systems, and especially now, with various deer hunting seasons open. The expansion of the current statutes through the enactment of the Felony Trespass Bill puts more people at risk for felony-level convictions if they have not secured “consent” by the energy provider beforehand. Vague and overbroad standards are particular dangerous for indigenous people and people from other marginalized groups because they provide law enforcement with the legal authority to manifest their implicit bias and target certain groups. Providing private companies with new land rights, enforced by the provision of county and state law enforcement, judicial and prison resources is unprecedented.

Existing law addresses damage to property and trespass. The Felony Trespass Bill is unnecessary and dangerous. Private companies should not be given new property right, especially with respect to Indian lands. We respectfully request that you veto the Felony Trespass Bill.

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Mike Wiggins, Jr.
Tribal Chairman